

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554
Oct 26 9 53 AM '92

DISPATCHED BY
MM Docket No. 92-253

In re Applications of

BAKCOR File No. BRH-900330VV
BROADCASTING, INC., Debtor
c/o DENNIS ELAM, TRUSTEE

For Renewal of License of
Station KKIK(FM), Lubbock, Texas

SOUTHWEST File No. BPED-900629MK
EDUCATIONAL MEDIA
FOUNDATION OF TEXAS, INC.

For Construction Permit for a
New FM Station on Channel 229C1
Lubbock, Texas

HEARING DESIGNATION ORDER

Adopted: October 13, 1992; Released: October 26, 1992

By the Chief, Audio Services Division:

1. The Commission, by the Chief, Audio Services Division, Mass Media Bureau, acting pursuant to delegated authority, has before it: (1) the license renewal application of Bakcor Broadcasting, Inc., Debtor c/o Dennis Elam, Trustee ("Elam") for renewal of license of Station KKIK(FM), Lubbock, Texas; (2) the mutually exclusive application of Southwest Educational Media Foundation of Texas, Inc. ("SEMFOT") for a construction permit for a new FM station specifying the KKIK(FM) frequency;¹ (3) a joint request for approval of settlement agreement between Elam and SEMFOT filed July 12, 1991; (4) an opposition to the joint request filed September 6, 1991, by Williams Broadcasting Group ("Williams"); (5) a reply to Williams' opposition filed September 17, 1991, by Elam and SEMFOT; (6) a supplement to the joint request filed October 3, 1991, by Elam and SEMFOT; (7) an informal objection to the proposed settlement filed January 28, 1992, by Roger Taylor; and (8) an order from the Bankruptcy Court dated April 22, 1992, voiding the contract of sale between Elam and SEMFOT. Also before the Commission is a petition to

dismiss or deny SEMFOT's application for a construction permit for a new noncommercial educational FM station in Midland, Texas.

2. The joint request, as supplemented, contemplated the dismissal of the Elam application for renewal of KKIK(FM), the grant of SEMFOT's construction permit application, and the purchase of KKIK's assets by SEMFOT for \$75,000. However, in light of the order of the Bankruptcy Court voiding the contract for the sale of the assets of KKIK(FM), the joint request will be dismissed. Further, the oppositions to the joint request will be dismissed as moot.²

3. SEMFOT. SEMFOT proposes to side-mount its transmitting antenna on an existing tower. The Federal Aviation Administration ("FAA") and the Commission's Antenna Survey Branch list the overall tower height above ground ("AGL") and above mean sea level ("AMSL") for the KKIK(FM) tower as 272.2 meters and 1249.7 meters, respectively. However, in Section V-B, Item 7, SEMFOT has recorded an AGL value of 266.1 meters and an AMSL value of 1243.1 meters. Accordingly, SEMFOT must either file FAA Form 7460-1 with the FAA for the proposed change or amend its application, whichever is appropriate.

4. In addition, the staff's study reveals there is a possibility that SEMFOT's signal, when mixed with the signals of three (3) other stations (Stations KAMY(FM), KTEZ(FM), and KEJS(FM), Lubbock), would produce a signal which has the potential to cause receiver-induced intermodulation interference on the frequency of four (4) stations (Stations KATX(FM), Plainview, Texas, KDNC(FM), Denver City, Texas, KOKN(FM), Hobbs, New Mexico and KIOL-FM, Lamesa, Texas). Accordingly, SEMFOT is required to investigate this matter and submit a statement specifically accepting full responsibility for the elimination of any objectionable interference (including that caused by receiver-induced or other types of modulation) to facilities in existence or authorized or to radio receivers in use prior to grant of this application.

5. Our engineering study indicates that SEMFOT has failed to address the matter of how it proposes to resolve any RF exposure to workers on the tower. See 47 C.F.R. § 1.1307(b). Consequently, we are concerned that SEMFOT may have failed to comply with the environmental criteria set forth in the *Report and Order*, in GEN Docket No. 79-163, 51 Fed. Reg. 14,999 (April 12, 1986). See also, *Public Notice* entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and the Environment" (released January 24, 1986). Under the rules, an applicant must determine whether its proposal would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment ("EA") containing the information delineated in 47 C.F.R. § 1.1311. Section 1.1307 states that an EA must be prepared if the proposed operation would cause exposure to workers or the general public to levels of

¹ An application to assign the license of Station KKIK(FM) from Bakcor/Elam to William S. Sanders (File No. BALH-900626EC) was dismissed by letter dated October 9, 1992.

² Essentially, the oppositions alleged that SEMFOT's president, T. Kent Atkins ("Atkins"), does not possess the requisite character qualifications to be a Commission licensee. Atkins' activities are being considered in conjunction with license renewal

applications for Stations KENT-FM, Odessa, Texas, KRGN(FM) and KLMN(FM), Amarillo, Texas, as well as applications for KENT, Odessa, KAMY(FM), Lubbock, Texas, KBTT(FM), Bridgeport, Texas and KOJO(FM), Lake Charles, Louisiana. This proceeding will be made subject to whatever action, if any, the Commission deems appropriate as a result of any proceeding which may occur in respect to the above-named stations.

RF radiation exceeding specific standards. Since SEMFOT failed specifically to indicate how workers engaged in maintenance and repair would be protected from exposure to levels exceeding the ANSI guidelines, it will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. *See generally*, OST Bulletin No. 65 (October, 1985) entitled "Evaluating Compliance With FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation," at 28. Therefore, SEMFOT will be required to file, within 30 days of the release of this Order, an EA with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. *See Golden State Broadcasting Corp.*, 71 FCC 2d 2289 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the EA, that SEMFOT's proposal will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted and the presiding judge shall thereafter not consider the environmental effects of the proposal. *See* 47 C.F.R. § 1.1308(d).

6. On May 1, 1991, Elam's predecessor in interest, Bakcor Broadcasting, Inc./Bakke Communications, Inc. ("Bakke") filed a petition to dismiss or deny SEMFOT's application for construction permit for a new noncommercial educational FM station in Midland, Texas. On January 3, 1992, the Commission dismissed SEMFOT's construction permit application for Midland. Dismissal of the Midland application has rendered moot the allegation that SEMFOT did not have reasonable assurance of its Midland site. As for the other allegations in the petition to dismiss or deny, we conclude that, even though they were filed in connection with a different SEMFOT application, they are predesignation requests for issues. Accordingly, the remaining issues in Bakke's (now Elam's) petition to dismiss or deny will not be considered herein but may be raised in a petition to enlarge the issues pursuant to 47 C.F.R. § 1.229. *See Revised Processing of Broadcast Applicants*, 72 FCC 2d 202, 214 (1979). *See also*, *C. Ray Helton*, 4 FCC Rcd 1205, 1208, n.2 (MMB 1989).

7. ACCORDINGLY, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to SEMFOT in which it is concluded that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. § 1.1301-1.1319.
2. To determine which of the proposals would, on a comparative basis, best serve the public interest.
3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

8. IT IS FURTHER ORDERED, That this proceeding will be made subject to whatever action, if any, the Commission deems appropriate as a result of any proceeding which may occur in respect to the license renewal applications for Stations KENT-FM, Odessa, Texas, KRGN(FM) and KLMN(FM), Amarillo, Texas, as well as applications for KENT, Odessa, KAMY(FM), Lubbock, Texas, KBTT(FM), Bridgeport, Texas and KOJO(FM), Lake Charles, Louisiana.

9. IT IS FURTHER ORDERED, That SEMFOT SHALL FILE, within 30 days of the release of this Order, an amendment resolving the tower height discrepancies noted in ¶ 3, above.

10. IT IS FURTHER ORDERED, That SEMFOT SHALL FILE, within 30 days of the release of this Order, the Environmental Assessment required by 47 C.F.R. § 1.1311 and serve a copy on the Chief, Audio Services Division.

11. IT IS FURTHER ORDERED, That SEMFOT SHALL FILE, within 30 days of the release of this Order, the statement noted in ¶ 4, above.

12. IT IS FURTHER ORDERED, That the Joint Request for Approval of Settlement Agreement filed September 10, 1991, by SEMFOT and Elam IS DISMISSED.

13. IT IS FURTHER ORDERED, That the opposition to the joint request filed by Williams Broadcast Group and the objection to the joint request filed by Roger Taylor, ARE DISMISSED AS MOOT.

14. IT IS FURTHER ORDERED, That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order SHALL BE SERVED on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Elam and SEMFOT may inquire as to the identity of the Bureau counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named Bureau counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order SHALL BE SERVED on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, 1919 M Street, N.W., Room 350, Washington, D.C. 20554.

15. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, Elam and SEMFOT, pursuant to 47 C.F.R. § 1.221(c), in person or by their respective attorneys, within 20 days of the release of this Order, SHALL FILE in triplicate, a WRITTEN APPEARANCE, stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

16. IT IS FURTHER ORDERED, That Elam and SEMFOT, pursuant to § 311(a)(2) of the Communications Act of 1934, as amended, and 47 C.F.R. § 73.3594, SHALL GIVE NOTICE of the hearing within the time and in the manner prescribed, and SHALL ADVISE the Commission of the publication of such notice, as required by 47 C.F.R. § 73.3594(g).

FEDERAL COMMUNICATIONS COMMISSION

**W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau**